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**Topside Construction, Inc. and Operating Engineers,
Local Union No. 3, International Union of Oper-
ating Engineers, AFL-CIO.** Case 20-CA-
29481-1

May 17, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
LIEBMAN

Pursuant to a charge and an amended charge filed on February 4 and March 7, 2000, respectively, the General Counsel of the National Labor Relations Board issued a complaint on March 8, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20-RC-17245. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 14, 2000, the General Counsel filed a Motion for Summary Judgment. On April 18, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Union filed a joinder in the General Counsel's motion on April 24, 2000.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that

by letter of January 25, 2000, the Union requested that the Respondent furnish it with the names, addresses, job classifications, and wage rates of all current unit employees.

The Respondent's answer denies this allegation on the basis that it "lacks sufficient knowledge to admit or deny" that the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Contrary to the Respondent's denial, however, it is well established that the foregoing type of compensation and employment information is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.¹ The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, the Respondent apparently is relying solely on its challenge to the Union's certification as the grounds for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it has requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Carmichael, California, has been engaged in the construction industry as a provider of construction site preparation services. During the calendar year ending December 31, 1999, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 to other business entities, each of which meets the Board's standards for the assertion of jurisdiction on a direct basis. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 25, 1997,² the Union was certified on February 8, 2000, as the exclusive col-

¹ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

²The complaint erroneously alleges that the election was held on January 18, 2000. The record in the representation proceeding establishes that the election was held on April 25, 1997. On January 18,

lective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time heavy equipment operators employed by the Employer within Sacramento, Placer, El Dorado, and Yolo counties; excluding all other employees, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since January 25, 2000, the Union has requested the Respondent to bargain and to furnish information, and since February 2, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 2, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Topside Construction, Inc., Carmichael, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with Operating Engineers, Local Union No. 3, International Union of Operating Engineers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time heavy equipment operators employed by the Employer within Sacramento, Placer, El Dorado, and Yolo counties; excluding all other employees, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

- (b) Furnish the Union the information that it requested on about January 25, 2000.

- (c) Within 14 days after service by the Region, post at its facility in Carmichael, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 2, 2000.

2000, the Region issued and served on the parties the revised tally of ballots showing that the Union had received a majority of the valid ion. inadvertent error regarding the date of the election is immaterial and does not affect the result reached here.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 17, 2000

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Operating Engineers, Local Union No. 3, International Union of Operating Engineers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part time heavy equipment operators employed by us within Sacramento, Placer, El Dorado, and Yolo counties; excluding all other employees, office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested on about January 25, 2000.

TOPSIDE CONSTRUCTION, INC.